

**Background:**

- **State Policy Activities** — TCDD staff will provide an update regarding recent state public policy staff activities. Discussion topics include:
  - **TCDD’s Priority Bill List (Located behind Tab 7)**
  - **TCDD Summary: Governor’s Committee on People with Disabilities Accessible Parking Report**
  - **Public Comment to Texas Workforce Commission regarding State Use Program**
- **State Supported Living Centers Update** — TCDD staff will provide an update regarding recent SSLC issues. Discussion topics include:
  - **Rider 21 Cost Comparison Report**
  - **Joint Public Comment to Department of Aging and Disability Services regarding Supported Decision-Making in SSLCs**
- **Federal Policy Activities**— TCDD staff will provide an update regarding recent federal public policy issues. Discussion topics include:
  - Letter from Department of Education to Congressman Doggett regarding Early Childhood Intervention Program Provider Withdrawal

**Public Policy Committee — Agenda Item 7****Expected Action:**

The Committee will receive updates on these items and may make recommendations for consideration by the Council.

**Council — Agenda Item 12. A.****Expected Action:**

The Council will receive a report on the Public Policy Committee discussion.



## **TCDD Summary: GCPD Interim Report: A Review of Accessible Parking for Persons with Disabilities**

The Governor’s Committee on People with Disabilities (GCPD) released the 79-page “Interim Report: A Review of Accessible Parking for Persons with Disabilities” required by House Bill 1317 (84th Legislature) to provide information about relevant state and federal laws and regulatory requirements regarding parking for people with disabilities, including parking policies at the State Capitol and in state-owned parking lots.

GCPD gathered information from across the state, convening multi-agency meetings, contacting other states’ GCPD groups or equivalent organizations, conducting two online surveys, and soliciting public comments directly via email campaigns.

### **Background**

“Accessible parking” refers to parking spaces reserved for drivers with disabilities that meet federally mandated standards for accessibility, as per the Americans with Disabilities Act of 1990 (ADA). The State of Texas outlines these specifications within the Texas Accessibility Standards (TAS):

- Signage: the International Symbol of Accessibility (ISA) must be mounted in front of the parking space at least five feet above the ground; van accessible spaces must include the designation “van accessible” on signage.
- Van Accessible Spaces: one van accessible space required for every six accessible spaces.
- Van Space Width: 11 feet required or eight feet permissible if adjacent accessible aisle is eight feet wide.

- Access Aisle: width of five feet for accessible car and van spaces and length equal to the full length of the parking space.

The Texas Department of Licensing and Regulation oversees the TAS standards for accessible parking in compliance with construction standards outlined in Title III of the ADA. The Texas Department of Motor Vehicles is responsible for issuing accessible parking placards and plates: blue placards and ISA license plates denote permanent disability while red placards represent temporary disabilities, which must be renewed every four years.

## Major Findings

1. **Enforcement** was the top concern expressed in public hearings and survey responses. Lack of enforcement of existing parking laws was cited, as well as generally negative attitudes and inaction on the part of law enforcement and property owners in response to reported parking violations.
2. Survey respondents and public testimony also expressed widespread concerns about the **insufficient number** of accessible spaces. Almost four-fifths (79.4%) of survey respondents reported difficulty finding an accessible space at least once a week, with 40% reporting difficulty several times a week, and almost 20% reporting difficulty every day. 93% of the responses stated that finding an accessible space is so difficult because all accessible spaces are already occupied.
3. **Placard fraud and abuse** was widely reported to be responsible, in part, for the lack of accessible spaces for survey respondents and public hearing attendees. The report outlines generally, a lack of prosecution and investigation on placard fraud, as well as three types of unlawful parking fraud and abuse:
  - A. Someone without a disability using a vehicle with a specialty parking plate or placard belonging to a family member or friend with a disability;
  - B. ‘Grey market’ purchase and sale of parking placards online or through other means;
  - C. Forging or altering parking placards for use by a person without a disability.

## Recommendations

1. **Strengthen Enforcement** language in the Texas Transportation Code § 681.010 to require enforcement action from all individuals with responsibilities to enforce accessible parking laws (change “may” to “shall”) and limit judicial discretion to curb repeated dismissal of citations.
2. **Control Placard Fraud** through the creation of a fraud and abuse task force, the requirement to surrender a placard after the death of a family member with a disability, administrative review of death records for placard cancellation [similar to

Connecticut's General Statute § 14-253a(o)] and the redesign of the placard to be more tamper-resistant.

3. **Develop Public Awareness Campaigns** on the importance of accessible parking for Texans with disabilities.
4. **Codify Person-First Language** in the Texas Transportation Code to change “Handicapped Parking” to “Accessible Parking” as per the state’s respectful language initiative (Texas Government Code, Chapter 392).
5. **Promote Volunteer Enforcement** by developing programs to recruit and train volunteers on reporting violations and improve enforcement statewide.
6. **Improve Capitol Complex Accessibility** by increasing the number of accessible spaces in targeted areas, constructing sheltered accessible drop-off stations, and creating a clear accessible parking map for the public.
7. **Permit Alternative Sentencing** for accessible parking violators by amending Transportation Code § 681.011, allowing courts to order disability awareness courses, as well as community service or restitution with a nonprofit service agency for people with disabilities [similar to Washington Rev. Code § 46.19.050(12)].
8. **Increase the Number of Van Accessible Spaces** by modifying the requirements of Texas Accessibility Standards for medical facilities to allow for angled and parking and shared aisles.
9. **Update Standards for Painting Spaces** by modifying Texas Accessibility Standards for marking spaces to include painting the ISA within the space and “No Parking” in adjacent access aisles (similar to New Mexico Statutes § 66-1-4-1.B and § 66-1-4-4.E).
10. **Update Parking Signs** to include required information on fines or penalties and consequences of parking illegally within the accessible spaces.
11. **Expand GCPD Authority** within the Human Resources Code, Title 7, Chapter 115.009 to allow GCPD to train law enforcement and volunteer parking enforcers, and to allow GCPD to collaborate on public awareness campaigns with other state agencies.
12. **Further Study on Veterans with Disabilities** to determine how state and federal laws can be aligned to ensure that veterans with mobility disabilities are eligible for accessible parking placards, rather than permitting accessible parking for veterans with disabilities that do not cause mobility issues.

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December 21, 2016

TWC Policy Comments  
Workforce Policy and Service DeliveryAttn.: Workforce Editing  
101 East 15th Street  
Room 440T  
Austin, TX 78778

To Whom It May Concern:

**RE: Comments on Proposed New Rules, Texas Administrative Code, Title 40,  
Social Services and Assistance, Part 20. Texas Workforce Commission, Chapter  
806. Purchases of Products and Services from People with Disabilities,  
Subchapters A-I, §§806.1-806.92**

Thank you for the opportunity to comment on proposed §§806.1-806.92, which implements the requirements of Senate Bill (SB) 212 of the 84th Texas Legislature, Regular Session (2015), which abolished the Texas Council on Purchasing from People with Disabilities (the Council) and transferred all former Council powers and duties to the Texas Workforce Commission (TWC) effective September 1, 2015. Also in accordance with SB 212, the rules of the Texas Comptroller of Public Accounts were transferred to TWC and placed in 40 Texas Administrative Code, Chapter 806. Additionally the Council was replaced with an advisory committee appointed by TWC, the Purchasing from People with Disabilities Advisory Committee.

Please note that the Texas Council for Developmental Disabilities (TCDD) is represented on the Purchasing from People with Disabilities Advisory Committee. In the capacity of the TCDD representative, I have had the opportunity to work with Mr. Edward Serna, TWC Deputy Commissioner, and he has proven receptive to comments concerning the rules and related standards.

Note also that a number of the following comments are made to increase the general accessibility of information that is contained in the rules.

## **Subchapter A. General Provisions Regarding Purchases of Products and Services from People with Disabilities**

### **§806.1. General.**

**Recommendation:** Please insert the word “competitive” as follows: “(1) further the state’s policy of encouraging and assisting individuals with disabilities to achieve maximum personal independence by engaging in useful productive **competitive** employment activities;” Please add the word “competitive” before each use of “employment” throughout all of the rules in Chapter 806.

**Discussion:** References are made throughout the rules to employment. In most cases, TCDD would recommend that the term “competitive employment” be used instead of simply “employment” to reinforce the importance TWC is placing on phasing out subminimum wage positions.

### **§806.2 Definitions**

**Recommendation:** For purposes of accessibility, please clarify that “Agency” refers to the staff of the Texas Workforce Commission and “Commission” refers to the Texas Workforce Commission governing body comprising three commissioners.

**Discussion:** Because of the prominent role that the central nonprofit agency plays in the administration of the State Use Program, as well as the fact that the general public may not be attuned to differences between staff and the governing body of an agency, it would be helpful to make this clarification in simple terms in this rule. Referencing another rule in which definitions are contained is not helpful, and the definitions contained in §800.2 are not easily understandable.

**Recommendation:** In paragraph (2), please amend the definition of “Advisory Committee” to indicate the exact name of the committee, i.e., **the Purchasing from People with Disabilities Advisory Committee**.

**Discussion:** Given the numbers of advisory committees in state government, and the general inaccessibility of referenced laws for many people, this specificity would assist individuals in obtaining more information about the committee, its membership and meetings, and staff contacts on the internet or through the TWC switchboard.

**Recommendation:** In paragraph (5), the definition of “Community rehabilitation program (CRP)” uses the word “severe” to describe disabilities; this definition of CRP is statutory (Human Resources Code §122.002(3)).

- Please use the term “severe disability” consistent with statute wherever the term “disability” is used and define “severe disability” in this rule.
- **(10) Severe disability — A severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:**



- . (A) Is likely to continue indefinitely; and
- . (B) Results in substantial functional limitation in three or more of the major life activities.

- Please consider whether the term and definition of “disability” in paragraph (8) is needed, given that the statute prescribes that CRPs in the State Use Program should be serving people with “severe disabilities.” Inclusion of the term “disability” alone may contribute to confusion.

**Discussion:** The stated purpose of the State Use Program in statute (Human Resources Code §122.001, concerning Purpose) and in the proposed rule (§806.1, relating to General) is:

- To further the state’s policy of encouraging and assisting individuals with disabilities to achieve maximum personal independence by engaging in useful productive employment activities, and
- To provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

It is evident from the 2016 State Use Program annual report that a significant number of CRPs are not in compliance with the following provision in proposed rules:

**§806.41. Certification and Recertification of Community Rehabilitation Programs.**

- (f) An applicant for certification must submit a completed application and the required documents to the Agency through the CNA for the state use program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:
- (9) Notarized statement that the CRP agrees to maintain compliance with the requirement **that at least 75 percent of the CRP's total hours of direct labor, for each contract, necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/or package products will be performed by individuals with documented disabilities consistent with the definition set forth in this chapter.** If a CRP intends to seek a waiver from the 75 percent requirement of the CRP's total hours of direct labor for a contract, the waiver request must be submitted with the application for approval.

As the implementing entities for Chapter 122, the Commission and Agency will assist CRPs in complying with the law by providing clear definition of severe disability and using consistent terms throughout the subchapter.

**Recommendation:** In paragraph (10), please briefly indicate what “Texas Government Code, §2155.138 and §2155.069” are, e.g., “Texas Government Code, §2155.138, concerning exemption from bidding, and §2155.069, concerning testing and inspection of products...”

**Discussion:** The addition of these phrases is explanatory for individuals who may not be easily able to access the code.

## **Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines**

### **§806.21 Advisory Committee.**

**Recommendation:** Concerning paragraphs (c)(2) and (3), please consider the following changes to language:

- (2) The average hourly wage earned by each ~~an~~ individual, with and without disabilities, participating in the program;
- (3) The average annual salary earned by each ~~an~~ individual, with and without disabilities, participating in the program;

**Discussion:** When the earnings of individuals with and without disabilities are conflated, both for average hourly wage and for average annual salary, essential information about differences in wages is lost. The resulting averages obscure the gap in wages paid to individuals with and without disabilities. The recommended language makes it clear that collection of averages must be done on an individual basis.

**Recommendation:** Concerning paragraph (c)(5), please change “an” to “each.”

**Discussion:** This is for purposes of clarity, as previously discussed.

**Recommendation:** Concerning paragraph (c)(6), please add “The number and percentage...” Also, in this paragraph and throughout this subsection, please clarify if the timeframe for data collection and reporting is annual.

**Discussion:** The percentage of individuals placed in competitive employment can have vastly different implications depending on the number of individuals that the percentage represents. For example, if 50% of 442 individuals with disabilities obtain competitive employment, that is a very different accomplishment than 50% of 100 individuals.

**Recommendation:** In paragraph (c)(7), please clarify “percentage of work performed.” Does this mean by each individual or by all individuals together? Is it quantified in time spent? Is it based on actual job performance or job description?



**Discussion:** As written, the paragraph refers to “work performed by individuals with disabilities...” In the aggregate, collection of this data will not reflect any given individual who spends 100% of work time on repackaging.

**Recommendation:** Please change subsection (d) as follows: “The Committee shall provide input to the Commission on rules ~~in adopting rules~~ applicable to the program...”

**Discussion:** Please note that the committee as a whole was not involved in providing input in the adoption of these rules. Given the possibility that it may be years before the rules are reopened for comment as a result of further legislation or sunset review, it is urged that committee participation in commenting on the rules not be represented as being limited only to those periods of time when they are proposed for public comment.

**Recommendation:** Regarding subsection (e), please add language as follows:

- (e) The Agency shall provide administrative support to the committee including accommodations and supports as needed by committee members who have disabilities.

**Discussion:** Individuals with disabilities can make significant contributions at meetings and can bring a perspective that might otherwise not be considered or understood. Some individuals with disabilities require accommodations or supports to meaningfully participate in meetings. These include assistive aids and technology, communication aids, coaching prior to a meeting (such as explaining the agenda, going over topics that will be discussed, or documenting areas of interest for which the individual has input), and support during a meeting (help explaining different topics, assistance with speaking at the meeting, help remembering areas of interest and delivering input) and travel assistance.

**Recommendation:** In subsection (f), please add explanatory phrase as follows: The Committee is not subject to Texas Government Code, Chapter 2110, concerning state agency advisory committees.

**Discussion:** As previously discussed, relating to accessibility.

## **Subchapter C. Central Nonprofit Agencies**

### **§806.31. Contracting with Central Nonprofit Agencies.**

**Recommendation:** Please add language to this section requiring the Agency to publicly post information provided in subsections (f) and (g) within 30 days of receipt.

**Discussion:** The State Use Program is a public program. Information related to the program should be made publicly available.

### **§806.32. Performance Standards and Goals for a Central Nonprofit Agency.**

**Recommendation:** Please change the title of this section to “Performance Standards and Goals for the State Use Program.”

**Discussion:** Standards and goals should encompass all elements of the program.

**Recommendation:** Amend paragraphs (b)(1) and (2) as follows:

- (1) Increase competitive employment opportunities for individuals with disabilities **by requiring, and providing training for, the development of a person-centered plan including employment goals for each employed individual** ~~promoting employment counseling and placement services by~~ every CRPCRPs.
- (2) Increase competitive employment...

**Discussion:** Direct focus on achieving competitive employment through use of the person-centered plan. Suggest word search on employment to find all instances in which “competitive” could be inserted.

**Recommendation:** Amend paragraph (b)(3) to add “and conduct an annual customer needs assessment.”

**Discussion:** The contracts undertaken should support the identified needs of customers.

**Recommendation:** Delete paragraph (b)(4).

**Discussion:** The State Use Program does not need to be promoted given that its use is mandated in law.

## **Subchapter D. Community Rehabilitation Programs.**

### **§806.41. Certification and Recertification of Community Rehabilitation Programs.**

**Recommendation:** In subsection (d) delete the word “severe” and add the word “competitive” before “compensation.”

**Discussion:** “Severe” is not defined in the subchapter. “Competitive” is the emphasis.

**Recommendation:** Add the following language to paragraph (e)(2): ensure that documentation includes approved disability determination forms **completed and signed by a credentialed vocational rehabilitation counselor and signed by the employee who has been determined to have a disability** that shall be subject to review at the request of the Agency or the CAN under authority from the Commission...

**Discussion:** The current process allows for a determination of disability to be made in a number of ways and by a range of individuals of varying qualifications but does not require the individual being employed to be told of the determination.

**Recommendation:** Please expand paragraph (f)(8) as follows:

- (8) Copy of the wage exemption certificate (WH-228) if below minimum wages will be paid ~~to customers or~~ to individuals with disabilities who will be employed, **a plan to pay every individual minimum wage or higher before an application for**

**recertification**, and a statement of explanation of circumstances requiring subminimum wages **including the following**; ~~and~~

- (i) **The individual's person-centered employment plan;**
- (ii) **Evidence that the individual could not meet the goals on their person-centered employment plan;**
- (iii) **Evidence that the individual cannot do another job at minimum wage or higher;**
- (iv) **A plan to transition the individual to minimum wage or higher within one year;**
- (v) **A plan to provide, at prescribed intervals (every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment) career counseling, peer counseling, and information and referral services, designed to promote employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment, regardless of age; and**
- (vi) **For individuals 24 years of age or younger, documentation that the individual exercised all available services prior to being employed for less than minimum wage.**

**Discussion:** The additional language provides the context for having the exemption certificate and the steps being taken to eliminate its use.

**Recommendation:** Add new (n) and renumber the follow subsections:

- (n) A CRP shall promptly report to the Agency an instance of a state agency or organization using the State Use Program in a manner that does not meet its intended purpose to increase competitive integrated employment opportunities for individuals with disabilities.**

**Discussion:** This requirement clarifies program focus and provides a means of enforcing it.

## **Subchapter F. Complaints, Vendor Protests, Resolutions**

### **§806.61. Consumer Information; Complaints and Resolutions.**

**Recommendation:** Please amend subsection (d) as follows.

- (d) The Agency shall create an accessible process for employees of the CRP to file a complaint in a way that protects the individual's privacy and keeps the individual safe from retaliation. The process shall be posted in plain view at each CRP and described to each employee in a way that is accessible to them. Each employee shall be provided with a copy of the complaint process upon hire. The Agency shall make public a detailed report of the complaints listed**

**by type, frequency, and outcome no later than December 1 of each year.** ~~The Agency shall provide to the individual filing the complaint, and to each individual who is a subject of a complaint, a copy of the Agency's policies and procedures relating to complaint investigation and resolution.~~

**Discussion:** The process by which a person with a disability can file a complaint should be more accessible.

## **Subchapter G. Disclosure of Records**

### **§806.71. Records.**

**Recommendation:** Amend (d) as follows.

(d) No records belonging to a CNA or a CRP may be accessed or released ~~to anyone~~ **except as authorized**, ~~including advisory committee members, outside entities, and individuals, unless disclosure is required~~ under the Texas Public Information Act.

**Discussion:** The determination of whether material can be released requires a close reading of the law. The law gives consideration to a much broader range of potential requestors than the rule as proposed anticipates. It is necessary to consult the law and not rely on this rule for guidance around the release of information.

Thank you again for the opportunity to comment on these important rules.

Sincerely,

Linda Logan, MPAff  
Public Policy Specialist



## DADS Rider 21 — Cost Comparison Report Summary

| Setting   | Cost                               | Average<br>Monthly<br>Cost Per<br>Individual<br>— FY 2013 | Average<br>Monthly<br>Cost Per<br>Individual<br>— FY 2015 | Percent<br>Change<br>FY 2013<br>to FY<br>2015 |
|---|------------------------------------|---|---|---|
| State Operated ICF-IID<br>(State Supported Living<br>Centers) | Long-term Care Costs               | \$14,143.81   | \$17,637.46   | 24.70%  |
| State Operated ICF-IID<br>(State Supported Living<br>Centers) | Administrative /<br>Overhead Costs | \$5,090.40  | \$6,697.12  | 31.56%  |
|   | Total State Operated<br>ICF-IID    | \$19,234.21   | \$24,334.58   | 26.52%  |
| HCS Waiver — Residential                                      | Long-Term Care Costs               | \$5,116.89  | \$5,170.80  | 1.05%   |
|   | Acute Care Costs                   | \$356.21  | \$761.74  | 113.85%                                       |
| HCS Waiver - Residential                                      | Total HCS —<br>Residential Costs   | \$5,473.10  | \$5,932.54  | 8.39%   |
| HCS Waiver — All Settings                                     | Long-Term Care Costs               | \$3,472.29  | \$3,522.26  | 1.44%   |
| HCS Waiver — All Settings                                     | Acute Care Costs                   | \$465.15  | \$744.97  | 60.16%  |
|   | Total HCS — All<br>Settings Costs  | \$3,937.44  | \$4,267.23  | 8.38%   |

### Notes:

SSLCs include residential services, habilitation services, medical services, skills training, and adjunctive therapy services.

Medicaid reimbursed acute care services, such as hospitalization and doctor visits, provided to people in the HCS Waiver program are paid by HHSC. For SSLCs, these costs are covered in the per diem reimbursement rate.

HCS waiver acute services transferred from Fee For Service to Managed Care in FY 2015. This transition correlates with the increase in acute costs in the HCS waiver program.

**Average Dollars Paid by Month for HCS Waiver Services for People who  
Transition from SSLCs**

| <b>Residence Type</b> | <b>Mean<br/>FY 2013</b> | <b>Number of People<br/>FY 2013</b> | <b>Mean<br/>FY 2015</b> | <b>Number of People<br/>FY 2015</b> |
|-----------------------|-------------------------|-------------------------------------|-------------------------|-------------------------------------|
| Non-Residential       | \$4,115.44              | 54                                  | \$3,743.37              | 33                                  |
| Residential           | \$5,622.79              | 318                                 | \$5,695.04              | 234                                 |
| Total                 | \$5,403.98              | 372                                 | \$5,453.82              | 267                                 |

**State Operated ICF-IID (SSLC) Comparison of Select Consumer Characteristics  
— August 31, 2016**

| <b>Selected SSLC Consumer<br/>Characteristic</b>                 | <b>Number of<br/>People</b> | <b>% of Total<br/>People</b> | <b>Number of<br/>HCS Waivers</b> | <b>% of Total<br/>HCS Waivers</b> |
|--|-----------------------------|------------------------------|----------------------------------|-----------------------------------|
| Level of Need 1: Intermittent                                    | 370                         | 9.13%                        | 9,060                            | 30.67%                            |
| Level of Need 5: Limited   | 1,457                       | 43.31%                       | 12,737                           | 43.12%                            |
| Level of Need 8: Extensive                                       | 1,076                       | 31.99%                       | 5,102                            | 17.27%                            |
| Level of Need 6: Pervasive                                       | 508                         | 15.10%                       | 2,504                            | 8.48%                             |
| Level of Need 9: Pervasive Plus                                  | 16                          | 0.48%                        | 138                              | 0.47%                             |
| Total People   | 3,364                       | 100.01%                      | 29,541                           | 100.01%                           |
| Selected Mental Health<br>Diagnosis: Schizophrenia or<br>Bipolar | no data                     | 6.90%                        | no data                          | 7.27%                             |
| Physical / Ambulatory Status:<br>Ambulatory                      |                             | 64.77%                       |                                  | 88.38%                            |
| Physical / Ambulatory Status:<br>Non-Ambulatory                  | no data                     | 33.41%                       | no data                          | 10.97%                            |

Date: January 19, 2017

Texas Department of Aging and Disability Services (September 2014). Rider 23 Cost Comparison Report. Retrieved from [https://www.dads.state.tx.us/news\\_info/budget/docs/riders/Rider23CostComparisonReport.pdf](https://www.dads.state.tx.us/news_info/budget/docs/riders/Rider23CostComparisonReport.pdf)

Texas Department of Aging and Disability Services (December 2016). Rider 21 Cost Comparison Report. December 2016. Retrieved from [https://www.dads.state.tx.us/news\\_info/publications/legislative/rider21-cost-comparison-report-dec2016.pdf](https://www.dads.state.tx.us/news_info/publications/legislative/rider21-cost-comparison-report-dec2016.pdf)

Via Email: Julia.marsh-klepac@dads.state.tx.us

December 12, 2016

Julia Marsh-Klepac, Quality Assurance Manager  
Department of Aging and Disability Services  
701 West 51st Street  
Austin, TX 78751

**Re: Public Comments on Proposed Changes to Decision-Making Operational Policy**

The Texas Council for Developmental Disabilities and Disability Rights Texas appreciate the opportunity to provide joint comments on the proposed changes to statewide operational policy number 019.1, Decision-Making (currently policy number 019, Guardianship) relating to the Department of Aging and Disability Services (DADS) Guardianship Services Program. While our respective agencies welcome the addition of alternatives to guardianship within the Guardianship Services Program, our recommendations seek to strengthen access to supported-decision making agreements while clarifying that, consistent with recent legislative policy direction, guardianship should be an option of last resort. Our comments are intended to assist SSLCs in reducing reliance on guardianship and to emphasize alternatives to guardianship, as per the recent legislative direction codified within the Texas Estates Code, Chapter 1357. Supported Decision-Making Agreement Act. The recommendations outlined below seek to advance the values DADS holds related to dignity and choice in providing supports and services that enable individuals to retain or regain their right to make decisions and live without the need for a full or limited guardianship.

We respectfully submit the following comments:

**Draft Policy # 019.1**

- We suggest the following modifications to Definitions: Although statute is referenced in several definitions, key terms such as “Capacity,” “Legally adequate consent” and “Legally Authorized Representative (LAR)” have no reference to the law. We suggest using definitions lifted from the relevant statute, Texas Estates Code Title 3, Sec. 22.016. We have concerns that the definitions of “Capacity” and “Legally adequate consent” in particular go beyond the scope of the law and do not reflect the rights of an individual regarding the ability to provide consent until a court has ruled that a person is incapacitated.
- Regarding Section I. Determination of Support Needs, the current language does not clearly identify that the individual at the center of the determination is involved at each step of the process. In keeping with the person-centered provisions of the Supported Decision-Making Act, Texas Estates Code, Chapter 1357, efforts to



determine support needs should not impede the self-determination of the person [Texas Estates Code § 1357.002(3)]. The wishes of the person are not referenced in this process until section D., after the interdisciplinary team (IDT) has identified and documented supports needed by the individual. This process should be clarified by reiterating the individual's right to self-determination at the beginning of Section I. Determination of Support Needs.

- Regarding Section II. Coordination of Decision-Making Supports and Services and Guardianship Services, we have concerns generally that “decision-making supports and services” and “guardianship services” are grouped together without clear distinctions. We recommend separating these areas into two sections, with “decision-making supports and services” preceding “guardianship services” to emphasize that guardianship is an option of last resort. The content from Section III. Alternatives to Guardianship, should also be incorporated into the earlier section on “decision-making supports and services.”
- Also regarding Section II. Coordination of Decision-Making Supports and Services and Guardianship Services, we have multiple concerns with the listing of individuals determined to lack capacity as described in C. and D. It is not clear within the policy how these factors will be assessed for individuals, nor what the specific intent or purpose of this listing would be. In order to uphold individuals' rights and safeguard against subjectively identifying individuals merely suspected of lacking capacity, we recommend eliminating areas C. and D.
- Regarding Section III. Alternatives to Guardianship, we recommend including definitions and examples for each of the supports listed. As written, only two of the eight supports listed include definitions within the policy document.
- Regarding Section IV. Guardianship, we recommend broadly that the policy maximize independence and self-reliance by clearly delineating the circumstances under which a guardianship, particularly without a family member, would be necessary as per Texas Estates Code § 22.016 and § 1101.101. We recommend that DADS closely follow guidance provided by the U.S. Department of Justice and recent legislative direction concerning court-initiated guardians and guardianships generally. Rather than simply outlining the steps in order to proceed with the guardianship process, and particularly a court-initiated guardianship, we recommend additional language on less restrictive alternatives to guardianship (Texas Estates Code § 1002.0015 and § 1357.051) as well as clearly spelled out limitations to guardianship (including Texas Estates Code § 1001.001 and §1101.101).

## Exhibit A

- We recommend changing the headings on the table included in Exhibit A. The heading “Things to Consider” is unclear and does not appear to relate to the content included within the row. We recommend including a definition of the term, as well as complete sentences that provide clear direction and explanations of each support and service.
- Under “Supports/Services” the term “Supported Decision Making Agreement” should be changed to “Supported Decision-Making Agreement” as per Texas Estates Code, Chapter 1357.

## Exhibit C

- We recommend the addition of a letter similarly titled “Information on Becoming a Supporter” Letter, which would be addressed to a family member or other individual who may serve as a supporter for a person as part of a supported decision-making agreement. This informational letter should be sent **prior** to the letter as written in Exhibit C, which seeks to identify a potential guardian for a person said to have already attempted alternatives to guardianship.
- Regarding Exhibit C as written, “Information on Becoming a Guardian,” we recommend additional information on steps the SSLC may take (namely, that the SSLC may contact the court to proceed with obtaining a court-initiated guardianship) if a family member or friend is not able to serve as a person’s guardian. We further recommend that this letter be sent via certified mail, return receipt requested, in order to appropriately ensure receipt and documentation of the letter for purposes of the court.

## Exhibit D

- We recommend that Exhibit D “Request Letter for a Court Initiated Guardianship” include **significantly more documentation** detailing attempts to contact a potential supporter, a potential guardian and all previous attempts made at less restrictive alternatives to guardianship. We are concerned that the letter as written contains only information which may be pulled from an individual’s intake information and may be abused. In order for the court to make an informed and ethical judgment concerning an individual’s capacity and need for a court-initiated guardianship, the SSLC should provide as much clear documentation as possible; including, but not limited to, times, dates, and methods of communication in contacting family members or friends, as well as copies of any and all correspondence related to attempts at less restrictive measures.

## **Exhibit E**

- Regarding Exhibit E “Guardianship Status Update Letter,” we recommend including information for the contact information for the court, which may be helpful to the guardian receiving the notice. As the court will already be receiving a copy of this letter, including the court’s contact information should not be an additional burden for SSLC staff.
- Additionally, we recommend including language that would clarify potential next legal steps that the SSLC may pursue in coordination with the court, if documentation of guardianship renewal is not received. Any additional information on the role of the SSLC in contacting the court should include references to relevant statutes (including 40 TAC § 2.253 and § 4.105; Texas Estates Code, Title 3; and Texas Estates Code § 1357).

Thank you for your service to Texans with disabilities and for the opportunity to provide input on this important policy revision. Please do not hesitate to contact us with any questions.

Sincerely,

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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC -9 2016

Congressman Lloyd Doggett  
2307 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Doggett:

This letter is in response to your October 19, 2016 correspondence to the Office of Special Education Programs (OSEP), in which you express concerns regarding the Texas Early Childhood Intervention (ECI) program under Part C of the Individuals with Disabilities Education Act (Part C of the IDEA). Specifically, reduced State appropriations and reduced pediatric therapy reimbursement rates in Medicaid had led three ECI providers to withdraw from the ECI program. In your letter, you requested that our office work with the State to ensure that infants and toddlers with disabilities and their families have access to early intervention programs administered under Part C. We appreciate your concern and assure you that we have been working diligently with the Texas Health and Human Services Commission's (HHSC) ECI program to ensure that contracts are secured for the regions impacted and that infants and toddlers with disabilities and their families have access to the services to which they are entitled under Part C of the IDEA.

In an October 28, 2016 call with the Associate Commissioner of HHSC, we were informed that contracts with new service providers had been secured for regions previously served by the Emergence Health Network in El Paso and the North Texas Rehabilitation Center. On November 1, 2016 we were notified by HHSC that a contract had been secured for the Tyler area, previously served by the Andrews Center. In a follow-up call on December 2, 2016 we were notified by HHSC that there is the potential for eleven or twelve additional ECI providers to withdraw from the ECI program. In response to the December 2, 2016 call we are meeting with HHSC leadership in Austin Texas on December 15, 2016.

Thank you for your continued interest in this issue. We will continue to work with HHSC to ensure that early intervention services are made available to all eligible infants and toddlers with disabilities and their families. If you have any further concerns regarding this issue, please feel free to contact Lloyd Horwich in the Office of Legislative and Congressional Affairs at 202-205-0490.

Sincerely,

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2600

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